THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO. 9349 of 1996

DATE: 22-01-2007

Between :

Smt. R.Jyotsna Krishna Kumar

… Petitioner

And

The Defence Estates Officer,
Secunderabad, Hyderabad and 2 others.

… Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO. 9349 of 1996

ORDER:

The petitioner claims to be absolute owner of the premises bearing Bungalow No.180, Bowenpally, Secunderabad. It is stated that the said building, comprising Ac.5.27 guntas of land was purchased by the petitioner under a registered sale deed, dated 13-12-1967, from one Smt. Usha Rani Jain.

The specific case of the petitioner is that the premises in question is a private property and its title as such can be traced from at least 3-3-1886 on which date the bungalow with the appurtenant land was gifted by Smt. Bair Virabhairah in favour of her daughter-in-law Smt. Bair Dhunbairah. The property was never claimed by the Government or the Cantonment Authorities and as a matter of fact the Military Estate Officer, Hyderabad Circle, Secunderabad vide proceedings dated 18-08-1952 granted unconditional permission for sale of the said premises in favour of Smt.Sheelavathi. Thus though the bungalow is situated within the Cantonment area, it is a private property which was in possession and enjoyment of the petitioner's vendor and her predecessors in title without any hindrance or interference by the Cantonment or the Government. From the date of purchase on 14-12-1967 under a registered sale deed, the petitioner has been continuing in possession and enjoyment of the said property along with her family members by paying the taxes regularly as levied by the concerned authorities of the Secunderabad Cantonment.

While so, the first respondent-Defence Estate Officer issued a

notice, dated 22-11-1994, calling upon the petitioner as well as her vendor Smt. Usha Rani Jain to show cause as to why an order of demolition should not be made under the proviso to Section 5-B (1) of the Cantonment Act, 1924 alleging that Bungalow No.180 is classified as B-3 as per the records of the Defence Estate Officer and it is placed under the Management of the Defence Estate Officer. It is alleged that the property belongs to the Central Government and Smt. Usha Rani Jain was granted only occupancy rights but they have been un-authorisedly making constructions in the premises without obtaining permission from the Government of India as per the terms of the old grant under the provisions of the Cantonment Act, 1924.

In response to the same, the petitioner through her counsel sought time for filing reply together with supporting documents and accordingly, the first respondent had fixed the enquiry on 24-04-1996. Meanwhile, the petitioner was also served with a letter dated 24-02-1995 informing that her application for mutation of the records cannot be accepted and that the un-authorised use of the appurtenant land of Bungalow No.180 for commercial purpose should be stopped forthwith. The petitioner issued a detailed reply through her counsel denying the allegations made by the first respondent and contending that Bungalow No.180 is a private property and cannot be classified as old grant situated in GLRSy.No.514.

Apprehending forcible dispossession, this writ petition has been filed seeking Mandamus declaring that the entries said to have been made in the Government land records and the consequential proceedings for demolition of Bungalow No.180 are arbitrary and illegal and consequently to direct the respondents not to interfere with the possession and enjoyment of the property comprised in Bungalow No.180.

This Court, while directing notice to the respondents, by order dated 07-05-1996 granted interim direction restraining the respondents from interfering with the possession of the petitioner.

A counter affidavit has been filed on behalf of the respondents 1

and 2 stating that as per the records available in the office of the Defence Estate Officer, Bungalow No.180 comprising GLR. Sy.No. 514 admeasuring 5.27 cents is classified as B-3 and it is placed under the management of Defence Estate Officer. Hence, the Central Government is the landlord and only occupancy rights are vested with Smt.Usha Rani Jain. Thus, the petitioner's possession is un-authorised and therefore, the first respondent initiated proceedings vide notice dated 22-11-1994 for removal of the un-authorised constructions under Sub-section (1) of Section 5-B of the Public Premises (Eviction of Un-authorised Occupants) Act,1968. It is contended that even assuming that the petitioner had purchased the premises from Smt. Usha Rani Jain, she will only acquire occupancy rights, but cannot claim absolute ownership. At any rate since the enquiry pursuant to the show cause notice, dated 22-11-1994, is yet to be conducted and in case any adverse order is passed, a right of appeal to the Civil Court is available, the interference by this Court at this stage is not warranted. It is contended that mere payment of property tax by the petitioner will not change the nature of the land and will not confer ownership. Since admittedly the vendor of the petitioner executed an admission deed, which itself shows that Bungalow No.180 is an old grant, petitioner cannot acquire any better title than her vendor. Hence, the writ petition is without any substance and liable to be dismissed.

Heard the learned Counsel for both the parties.

As can be seen from the material on record, the respondents have not yet passed any final order. Though notice was issued calling upon the petitioner to submit her explanation alleging that the premises in question is classified as old grant and the petitioner had submitted her reply denying the allegations and claiming ownership, the matter is still under enquiry and no decision as such has been taken. Hence, it would not be appropriate for this Court to express any opinion as to the rival claims made by the parties. As a matter of fact, in the absence of any adverse order the writ petition itself is premature.

In the circumstances, without expressing any opinion on merits, the Writ Petition is disposed of with a direction to the 1st respondent to consider the explanation offered by the petitioner and pass appropriate orders in accordance with law after giving an opportunity of hearing to the petitioner. Till such order is passed, the possession of the petitioner in respect of the premises in question shall not be disturbed. No costs.

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G. ROHINI,J.

Dt. 22-1-2007
KLP